THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No :3045 of 2007

DATED:27-04-2007

BETWEEN:

Anusuri Surya Narayan.

..... PETITIONER

AND

The Central Bank of India,
Rep., by its Regional Manager,
Vijayawada & another.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents.

Petitioner seeks a writ of mandamus declaring the action of the respondents in conducting the auction on 19-02-2007 in pursuance of the auction notification, dated 13-01-2007, published in Eenadu Newspaper on 19-01-2007, as illegal, and arbitrary.

Earlier the respondent bank filed O.A.No.86 of 2003 before the Debt Recovery Tribunal, Visakhapatnam (under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993) against the petitioner (3rd defendant therein) and others for recovery of the debt due to it secured by an equitable mortgage of the property of M/s Durga Rice Mill, a partnership firm of which the petitioner claims to be a partner. During pendency of the proceedings before the Tribunal, the bank initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act'). Notice under Section 13 (4) of the Act was served on 02-03-2005 and the secured assets were notified for sale by a notification, dated 21-04-2005, scheduling the auction for the sale of property

to 24-05-2005. Aggrieved thereby, the petitioner preferred an application, S.A.No.90 of 2005, to the Debt Recovery Tribunal under Section 17 of the Act. In I.A.No.266 of 2005 the Debt Recovery Tribunal granted stay of all further proceedings in the auction pursuant to the auction notification, dated 21-04-2005, and another, dated 23-04-2005. As the petitioner failed to deposit the amounts which are required to be deposited as a condition precedent to an application under Section 17 of the Act, the Debt Recovery Tribunal vacated the stay by an order, dated 12-09-2006, in I.A.No.266 of 2005. The proceedings under the Act are not therefore at present subject to interdiction by any order of a Court or Tribunal of competent jurisdiction.

Thereafter, the respondent bank issued the impugned notification, dated 13-01-2007, published on 29-01-2007 whereunder auction of the secured assets, possession of which was taken under Section 13(4) of the Act, is scheduled on 19-02-2007.

The singular complaint of the petitioner is that no notice under Rule 8(6) of the Debt Recovery Rules, 2002 (for brevity, 'the Rules') was issued.

Defending the impugned notification the learned standing counsel for the respondent bank contends that since the Tribunal had granted stay of all further proceedings at a point in time after the sale notification was earlier issued i.e., on 21-04-2005 and as the said interim order has now been vacated by the Tribunal the

bank is well within its rights in proceeding from that stage and has accordingly re-notified a date for the auction.

On an analysis of the provisions of the rules, in particular Rule 8(5) and 8(6) of the Rules the stand of the respondent bank appears inconsistent with the statutory purposes and the procedural discipline mandated by the rules.

Rule 8(5) ordains that the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the specified methods. Rule 8(6) enjoins the authorized officer to serve on the borrower a notice of thirty days for sale of the immovable secured asset, under sub-rule 5.

On an interactive analysis of the provisions of the Act, in particular, the provisions of the Section 13(4) r/w 8(5) and 8(6) of the rules, the underlying legislative purposes appear to be that these procedural prescriptions are enjoined so as to afford an opportunity to the borrower to adjust his affairs as to render a sale unnecessary by repaying the debts due. Wherever a sale once notified is postponed for a length of time there is always the possibility that the borrower/guarantor could meanwhile so arrange his affairs so as to be able to redeem the liability and preserve his asset. Such an assumption cannot be eschewed. The regulatory regime under rule 8(5) and 8(6) of the rules is also conceived in the interest of ensuring proper valuation of the assets to be

brought to sale. Accordingly, the valuation of the asset is required to be made at a period contemporaneous to the point of sale.

In the facts on hand, the earlier sale proposals were in April, 2005 nearly two years earlier to the impugned sale notification and as on date three years earlier and in a context where inflation is on the rise. Therefore a valuation contemporaneous to the date of the sale is required to be made to subserve the legislative purposes of ensuring adequate return to the financial institution which has lent the money, a competitive return on the asset so as to leave something for the owner where a sale fetches an amount in excess of the liability, as also a public interest component namely ensuring avoidance of nepotistic or negligent conduct by officers of banks and financial institutions. The legislative architecture of rules 8(5) and 8(6) is to effectuate these purposes.

On the aforesaid analysis the impugned sale notification which was admittedly not preceded by a notice to the borrower as required under rule 8(6) is unsustainable. Accordingly, the impugned notification is quashed. The respondent bank is however at liberty to issue a fresh sale proclamation duly following the provisions of Rule 8 and in the light of the observations herein. The Writ Petition is allowed to the extent above. There shall be no order as to costs.

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GODA RAGHURAM,J

27th April, 2007.

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